File No. 240

Collection No.

19 33 .

Mysore Residency

Bangalore.

Pros. Serial Nos. 1-6

S.P. 265

Subject.

Incometax Review Petition (No.4 of 1933-34) Baktawarmal Bachraj Tate Lane, Shoolay.

Previous References.	**Later References.**

S. 97.—(Blue).

MFP—168S&P—(M-184)—11-8-34—60,000.

S.N.1.
P.U.C.

Income-tax Review Petition No.4 of 1933-34.

Petition dated the 13th June, 1933, from Mr. Baktawarmal Bachraj, Tate Lane, Shoolay.

The assessment and appeal records may be called for.

~~The usual~~ Draft ~~is~~ submitted.

27/6/33

Comptr.

S.N.2 Issued: No.4822 dated the 30th June 1933.

S.N.3 Letter No.F.460 dated the 18th July 1933 from the Collector and Assistant Commissioner of Income-tax, C. & M. Station, Bangalore.

The assessment and appeal records received from the Assistant Commissioner are placed below.

The assessees in this case are Messrs.Baktawarmal Bachraj, a firm of Marwari money-lenders doing business in the Civil and Military Station of Bangalore, K.G.F., and other places in S.India. The firm is said to consist of three brothers (1) Baktawarmal, (2) Bachraj and (3) Kundanmall. The first two are stated to be living permanently in Marwar; and the third, Kundanmall, it appears, is in charg of the business here.

P.U.C.

The facts leading up to the present review petition are as follows:-

On 5-4-1932, the Income-tax Officer of the Station issued a notice to the assessees under section 22(2) requiring

requiring them to furnish a return of their income for 1931-32 by the 15th May 1932. This notice appears to have been received by one Kannyalal (Kundanmall's son) on 3-5-1932. In reply to this notice, one K.Pusalal, who described himself to be a "Gumastha" (clerk) in charge of the shop, wrote to the Income-tax Officer, on 9-5-1932, stating that his Sowcars (masters) Baktawarmal Bachraj had gone to Marwar, that he was a new-comer and had no knowledge of the accounts of the shop, that he was therefore unable to submit the return of income called for and praying that time might be granted till September 1932 when his masters were expected to return to Bangalore. The I.T.O. thereupon issued a notice to him asking him to appear before him on 30-5-1932. Pusalal appeared on 31-5-1932 and promised to send the return by 20-6-1932. He said that he had to get the account books from Marwar. The return was received on 21-6-1932. It was signed by Pusalal. In his letter forwarding the return, Pusalal stated that the owner was in Marwar owing to ill-health, that he (the clerk) had been employed since January 1932 or thereabouts and that he had no knowledge of the house properties owned by the firm. The return was accompanied by detailed statements showing the income and expenditure of the assessee firm during the year of account.

On 26-12-1932, a notice under section 23(2) was issued requiring the assessees to produce their accounts before the I.T.O. on 11-1-1933. This was received by one Bansilal, Brahmin on 3-1-1933. On 11-1-1933, this man, Bansilal, wrote to the I.T.O. as follows:-

"Reference your notice No.F/136 dated the 26th Dec. 1932 addressed to Mr.Bhakthawarmal Vachraj, Shoolay.

"I the undersigned Bansi Brahmin of Mr.Bhakthawarmal Vachraj beg to state that the above notice was served on me through pressure of your representative though I explained to him the fact that my employer the addressee is not in the Station and that I was not authorised to deal with such matters. Mr.Bhakthawarmal Vachraj and family have gone to their native place Bagri Sajjanpur in Marwar for marriage and

and it will take two months more for them to return.

"I have written to him of the notice and in the meantime I request you to kindly grant and wait till March 1933 in which month, he will be here when the production of accounts and documents will be complied with. I have no accounts with me and time until the last week of March 1933 may very kindly be allowed".

Page 21-Below (5)

(6)

The I.T.O. sent a reply to the effect that it was impossible to wait for the production of books till March 1933, that, as a special case, he was prepared to grant time till 20th January 1933, that arrangements should be made to produce the books on that date, and that, if they failed to produce the books on that day, assessment would be made on estimate. This letter was received at the shop on 11-1-1933 by one "L.Arokiaswamy".

Page 23 of assessment record.

(K) (7)

As the books were not produced on the due date, the I.T.O. made an assessment under section 23(4) on an estimated income of Rs.10,600/-. Notice of demand was issued on 21-1-1933 and served on Bansilal, Brahmin on 29-1-1933.

Page 37.

(8)

(T)

On 2-2-1933, a boy named Harakchand, said to be the grandson of Baktawarmal, one of the partners of the firm, filed a petition staing that the agent and partner in charge of the firm at Bangalore was one Kannyalal, who was away at Marwar; that Bansial, on whom the notice had been served was only a cook of Kannyalal, who had been left here to look after the house; that Bansilal was a boy of about 13 years and had no connection with the business or any authority to receive such notices; and that, in the circumstances, the assessment should be re-opened and accounts examined. He appeared before the I.T.O. in response to a notice and the latter passed the following order on the boy's application:-

(I/1)

"The petitioner is a student reading at Kolar. He says he is the grandson of Bakthawarmal. This seems to be his only right to speak on behalf of the assessee. He knows absolutely nothing of what he is speaking about and I find it impossible to take the lad seriously. The petition is dismissed".

vide Slip below (T)

(T/2)

A copy of this order was sent to the boy. He received it on 10-2-1933, but did not give an acknowledgment. On 13-2-1933, the I.T.O. received a telegram from one Sukharaj, Bagri Sajanpur (in Marwar) staing that Bakhatawarmal Bachraj and all his family had gone on pilgrimage, that they would be arriving in Bangalore in a fortnight and asking for a fortnight's time. The telegram did not say for what purpose time was asked for and it was ordered to be filed.

(9)

The tax which fell due on 5-2-1933 was not paid and a notice was therefore issued to the assessees warning them that a penalty would be imposed if the tax was not paid. This notice was received by Kundanmall on 28-3-1933.

Page 61 – Below (T/2).

(V). (10)

On 3-4-1933, Kundanmall made an application to the I.T.O. praying that the matter may be reconsidered and the assessment revised. He stated that he was away at Marwar from 25-12-1932 to 27-3-1933, that he had no agent or even a clerk here to look after the business, which practically was not being conducted for some years past, that the notice requiring him to produce his accounts in support of his return was not served on him, but on a domestic servant whom he had left in charge of the house and that the latter had no authority to receive it or to correspond with the officer. He also contended that the assessment was highly excessive as would be apparent if his accounts were examined and that, in fact, he was working at a loss in Bangalore. On 19-4-1933, the I.T.O. replied to him saying that he was not empowered to revise the assessment already made and that he (the assessee) might appeal to the Assistant Commissioner if so advised.

Pag 65 – Below (V).

(L)

On 26-4-1933, Kundanmall filed an appeal before the Assistant Commissioner against the I.T.O.'s order dated 8-2-1933 refusing to reopen the assessment under section 27. (This was the order passed on the boy's application). He also filed an application under section 30(2) requesting

(11)

(T/1)

(T)

(N)

the

the Assistant Commissioner requesting him to condone the delay (of about 6 weeks) in presenting the appeal. (Under section 30(2), the appeal should have been preferred within 30 days of the date of refusal to make a fresh assessment under section 27. The order of refusal, which was passed on Harakchand's application, is dated 8-2-1933 and the appeal should therefore ordinarily have been preferred within a month from that date, whereas, it was actually filed only on 26-4-1933).

The 'statement of facts' attached to the appeal petition and the application for condoning the delay are at flags M & N respectively. The note which the I.T.O. submitted to the Assistant Commissioner in this connection is at flag H. The application to condone the delay was summarily rejected by the Assistant Commissioner and the appeal was therefore not considered. The assessees have therefore filed the present review petition before the Commissioner.

The points that arise for consideration are (i) whether the notice for production of accounts issued under section 23(2) was properly served and, if so, whether the assessees were prevented by sufficient cause from complying with the terms of that notice and (ii) whether the assessment made under section 23(4) was unduly high.

Point (i). It will be seen from paras 4-9 ante that notices addressed to the assessees were received by different persons on different occasions. Kannyalal (son of one of the partners), Pusalal (who described himself to be a clerk of the firm), Harakchand (grandson of one of the partners), Arokiaswamy (his connection with the shop is not known), Bansilal (who is stated to be domestic servant of the assessees) and Kundanmall (the present petitioner and one of the partners)

have all received notices on different occasions. In fact, notices addressed to the firm appear to have been received by any one who happened to be in charge of the shop at the time they were taken there. Evidently, when the notice in question was taken to the shop, Bansilal was in charge of the shop and it was therefore served on him. The I.T.O. says that what actually happens in Marwari cases is that the man who is actually at the shop is allowed to sign for the assessee without any protest from the assessee against any I.T.proceedings and that no one man is appointed "representative". Bansilal who received the notice wrote to the I.T.O. that he had informed his masters at Marwar about the receipt of the notice. This letter, the subsequent application of Harakchand and the telegram received from Marwar clearly go to show that the assessees were aware of the receipt of the notice. We are not concerned with the question whether Bansilal had authority to receive the notice or to correspond with the I.T.O. That is a matter for the assessee. There is evidence to show that whoever received the notice, it did in fact reach the assessees. It seems therefore that the notice was properly served.

The next question is whether the assessees were prevented by sufficient cause from producing the accounts. The difficulty in deciding this question is that the assessees are not speaking the whole truth. Please see in this connection the I.T.O.'s note at H. It may be a fact that Bansilal who received the notice was only a domestic servant and was not in a position to produce the account books of the firm. It may also be a fact that the assessees and all other persons interested in his business were away at Marwar and there was no responsible person left at Bangalore who could have produced the accounts. But the petitioner

15

is making a false statement when he says that he was not aware of either the receipt of the notice by Bansilal or of the assessment under section 23(4) or of the application filed by Harakchand until he came to Bangalore and received the notice in which he was asked to show cause why a penalty should not be levied for non-payment of the tax. There is clear evidence to show that he was appraised of the notice and knew what was happening in Bangalore. If, instead of denying all knowledge of the receipt of the notice, he had admitted that he was aware of the notice, but could not make proper arrangements for the production of accounts at Bangalore and explained why he was unable to do so, it would have been an easy matter to decide whether he was prevented by sufficient cause from complying with the notice. As it is, one can, it is submitted, only hold that the assessees had a reasonable opportunity to comply with the notice and that they failed to do so.

(16)

Perhaps, the only point in favour of the assessees is that, from an examination of the assessment records of previous years, it appears that they have been declared not liable to income-tax in all the years since 1924-25, except in 1930-31, when they were assessed under section 23(4) on an estimated income of Rs.2965/- for non-production of accounts. (The assessees had produced their accounts once, but the Income-tax Officer wanted to examine them again. The assessees however failed to produce them for a second time on the ground that they had already been examined once).

(17)

This year, the assessees have been taxed on an estimated income of Rs.10,600/-.

(18)

In these circumstances, it is for orders whether the petition may be rejected or whether the Commissioner is prepared to order a de novo assessment

Puc

under

under Section 27 after examining the accounts.

If the Commissioner wishes to hear the petitioner before orders are passed, a date for his appearance may kindly be fixed.

23.X.33

(From para 2)

Commissioner.

Draft memo is submitted with fair for signature.

28.X.33

The hearing of this case stands adjourned to Tuesday the 12th December 1933 at 11 a.m.

Paragraphs 2 to 18 of the notes may kindly be read.

11-12-33

(Para 22 ref)

Compl.

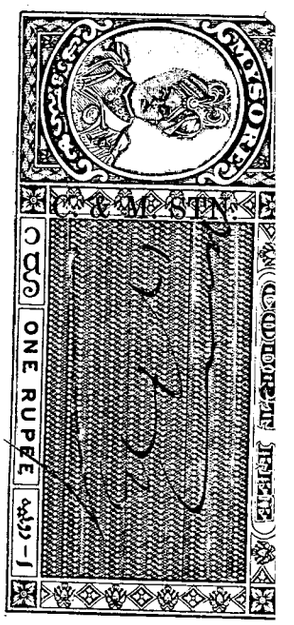
Please check my draft for correctness.

× Please see pages 3 & 5. The pencil Corrections are for consideration.

Correct.

Checked & re-submitted, with fair draft in half-margin.

17.1.34



To

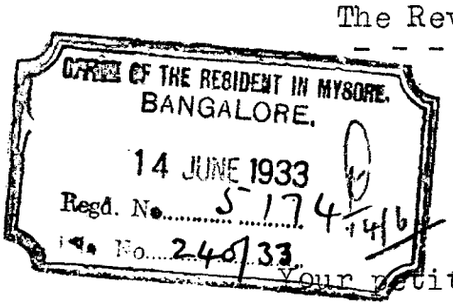
The Commissioner of Income -Tax

C&M. Station, Bangalore.

I. T. Rev. Petn. No. 4 of 1933-34.

The humble review petition of Baktawarmal Bachraj, Tate lane, Shoolay is as follows:-

The Review Petition is under Section 33 (1) of the Act.



Your petitioners have been assessed under Section 23(4) of the Act on an income of Rs ? 10,600/- for the assessment year 1932-33 for not producing the accounts.

There was no proper service of the notice issued under Section 23 Sub Section 2 by the Income -Tax Officer as the notice was served on a minor boy doing the duty of a cook and the petitioner had no reasonable opportunity to comply with this notice under Section 23(2) as he had not the knowledge of this notice.

The petitioners ' firm consists of three brothers Baktawarmal (2) Bachraj and (3) Kundanmall and as none of them were at the business place for the reasons fully explained in subsequent paras and in Appeal petition the petitioners

were unable to prodce the books and as such the assessment was made under Section 23(4) by the Income -Tax Officer. The petitioners submit that there was no proper service of this notice under section 23 (4) as the same was served upon the minor cook boy. It seems without any knowledge of the petitioners and without any authority from the petitioners one of the grandsons of the petitioners family who was staying at Kolar and who was a minor came and preferred an (appeal) application to the Income-tax Officer to cancel the assessment under Section 27 The Petitioners were not aware of the fact of this petition under Section 27. The very order of the Income - Tax Officer under Section 27 shows that it was his own initiative that made this minor grandson to prefer an appeal under Section 27. The order of the Income -Tax Officer runs as follows :-

> ' The Petitioner is a student , residing at Kolar. He says he is the grandson of Battawarmal. This seems to be his only right to speak on behalf of the assessee. He knows absolutely nothing of what he is speaking about and I find it impossible to take the lad seriously. The petition is dismissed".

This order was passed on the 8th February 1933 by the learned Income -Tax Officer and there was no proper service of this order also as none of the

of the brothers were in Bangalore on the date of the service.

One of the brothers Mr. Kundanmull came to Bangalore on 27th March 1933 and on or about 28-3-1933 the petitioners received a notice asking them to show cause why a penalty should not be levied for non - payment of the tax. The petitioners then on enquiry to the cook got the news that tax was levied long ago and that Harakchand the grandson of Bhatawarmal came from Kolar and put some application and received some reply. Kundanmull was horrified to hear this and - searched for the papers. He found some papers but he was unable to get at the order passed on the - application of the boy. He was unable to find the demand notice even. About the end of March 1933, the petitioners were able to find the order of the Income -Tax Officer and knowing not what to do , - Kundanmull requested the Income -Tax Officer to revise the assessment order by his letter dated 3-4-1933. The Income-Tax Officer by his letter dated 19-4-1933 informed the petitioners that no revision could be made by him and that if the petitioners are so - advised they may appeal to the Assistant Commissioner of Income -Tax

The petitioners on taking legal advise found that the time of appeal had expired and without losing further time they appealed to the Assistant - Commissioner

Under Section 30 requesting him to cancel the assessment made under Section 23 (4) and to - direct the Income -Tax Officer to make fresh assessment under Section 27. The Petitioners at the same time presented a petition to the learned Assistant Commissioner of Income-Tax (a copy of which is enclosed herewith) to condone the delay caused in presenting the appeal under cir - cumstances stated in the petition. The learned Assistant Commissioner by his order dated..... declined to condone the delay and did not register the appeal.

The petitioners have therefore to trouble your honour with this review petition. Your petitioners have got income from house properties and a very small income from money lending business not - exceeding Rs 2000/- per annum for the business at Bangalore, where interest payments are set off - against the income. The petitioners income at Bangalore will turn into loss. The petitioners though they have got their shops at Villupuram and at Kolar yet they are not taxable on the profits made at these places as the same have not been remitted to C&M. Station, Bangalore.

Your petitioners crave your kind indulgence in requesting you to refer to the grounds of appeal and the application requesting the learned Assistant

Assistant Commissioner to condone the delay caused in filing the appeal which are filed herewith. Your Petitioners do not want to waste your honour 's - precious time by reiterating the same grounds of appeal in this review petition.

The petitioners further submit that the assessment is extremely heavy and looking to the past history of the petitioners, it cannot be said to have based upon the proper facts and the best judgment of the learned Income -Tax Officer. The petitioners most humbly request your kind reference to the Muhammad Hayat Haji Muhammad Sirdar VS. The Commissioner of Income-Tax, Punjab and N.W.F. Frontier Province case No.414 reported on page 159 of Income-Tax cases , Vol : V part IV of the Reports of Income -Tax cases by P.R. Srinivasan. The relevant portion of the judgment of His Lordship the Chief Justice Shadila on page 172 is as follows :-

" When Statute says that the Income-Tax Officer shall make the assessment to the "best of his Judgment ", It means that he must make it according to the rules of reason and justice, not according to private opinion, according to law and not humour and that the assessment is to be " not arbitrary" ,vague and fanciful, but legal and regular. The Legislature in allowing the Income -Tax Officer to make the

the assessment to the best of his judgment, has no doubt conferred upon his discretion in the matter of assessing the income ; and if the Assessee withholds the account books or documents upon which a reliable estimate of income can be founded, the assessment must ex-necessitate rei be to some extent arbitrary. But, as laid down by the Rangoon High Court in S.P.K.A.A.M. Chettiar Firm Vs. The Commissioner of Income-Tax is must nevertheless be reasonable and should not proceed purely on the Income -Tax Officer 's private opinion to the exclusion of all material before him. Such an assessment cannot be said to have been made to the best of his judgment " . . . . . .

"It is true that a finding of fact recorded by him cannot be impeached even when it is not based upon any material nor is it open to the High Court to say with respect to a particular case that the assessment has been made contrary to the rules of Justice and good conscience. The High Court is, however, entitled to make a pronouncement upon the meaning of Section 23 (4), and to lay down that the Income -Tax Officer cannot be said to be make an assessment to the best of his judgment, if he is not guided by the dictates of Justice and fair play. An assessment resting upon the whim and caprice of the Income-Tax Officer cannot be elevated to the dignity of an assessment made to the best of his judgment?

Your petitioners request your honour to review the proceedings and caneel the assessment or modify the same in one of the following two main objections.

(1). That your petitioners were prevented from producing the accounts before the Income-Tax Officer by sufficient cause.

(2). That if your honour come to the conclusion that they were not prevented by sufficient cause in producing the books , relief may be given to the petitioners by reducing the tax if your honour find from the records that the assessment was not to the best of Officer's judgment. The petitioners were greatly handicapped as they had no opportunity of presenting their case under Section 27 and as the Assistant Commissioner did not entertain the appeal, the petitioners are put to - great injustice.

Your petitioners humbly request that in view of the objections and facts stated above, your honour may be pleased to cancel the assessment or modify the same, for which act of kindness your petitioners will ever pray. Unless your honour interfers and reviews the proceedings, there is no other way left to the - petitioners in this case to obtain Justice.

14.6/6/ 1933.
Bangalore,

I Kundanmull Exo

13.6.33

I, Kundanmull one of the brothers of the petitioners' Firm named in the above petition do - declare that what is stated therein is true to the best of my information and belief.

I Kundanmull Exo

From

Bhaktwamal Batchraj,

Tate Lane, Shoolay.

To

The Assistant Commissioner of Incometax,

C.& M.Station,Bangalore.

Sir,

Incometax Assessment 1932-33.

F.136.

Application for excusing delay in preferring the appeal,within time,

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Under Section 30 (2), I beg to request that your Honor will be so kind to condone the delay that took place in not presenting the appeal in time as I was prevented by causes beyond my control as stated below from filing the appeal within time.

Owing to the marriage of my daughter, I had to start to Marwar in December 1932 and there owing to the death of my son and paralitic illness of my brother I was detained long and was able to come to ~~Marwar~~ Bangalore on or about 27-3-1933. At the shop only cook of 14 years of age was left. To my misfortune, the assessment was made under Section 23(4)and the grandson of Batchraj - a school-boy- without our authority preferred an appeal under Sec.27 to the Incometax Officer which was dismisse by the order of the Officer dated 8-2-1933.

I humbly submit that I never knew abo the application of under Sec.27 nor about the order.Otherw I must have instructed him to file the appeal in time.

I returned to Bangalore on or about 27-3-1933 a knowing not how the assessment was made requested the

my letter dated 3-4-1933 to revise the assessment. It is by the letter of the Officer dated 19-4-1933 I learned that my remedy for cancelling of the tax or revision of the assessment lies in appeal to you.

I submit that I have taken the earliest opportunity of preferring the appeal and a request that the delay taken place in preferring the appeal to you may be condoned and I request you to admit the appeal and pass your kind orders on the same after giving me a hearing, for which act of kindness I shall every pray asin duty bound.

I have the honour to be,

Sir,

Your most obedient servant,

STATEMENT OF FACTS.

Your petitioner's firm consists of three brothers (1) Bhaktawarmal (2) Batcharaj (3) Kundanmal. Bhaktwarmal is aged about 60 and as such for past 7 years he does not attend the business affairs and is at Marwar. Batchraj left Bangalore about 2 years ago and he is at Marwar suffering for the past several months from Paralysis. Kundanmal was managing the business and he after submitting the return for 1932-33 had to go to Marwar in December 1932 for the marriage of his daughter. The petitioner left for Marwar on or about 13th December 1932, and his son Jagannathlal also started for Marwar after some days before your notice under Section 23(2) was issued. Thus the shop was left in charge of a cook who is a boy of about 15 years. His name is Bansi. Your petitioner just finished the marriage of his daughter when he was faced with a calamity of the death of his son. And before he could be free from the grief of the demise of his son he was met with another difficulty in the form of attack of Paralysis on Mr.batcharaj the brother of Kundanmal. As such Mr.Kundanmal was forced to detain at Marwar and it was only on or about 27th March 1933 that he was able to return to Bangalore.

On coming to Bangalore, the petitioner learnt that the assessment of the firm is finished and that the tax is to be paid. On or about 28-3-1933 the petitioner received a notice asking him to show cause why a penalty should not be levied for nonpayment of tax. The petitioner then on enquiry [illegible] got the news that assessment was finished long long ago and that [illegible], the grandson of Bhaktawarmal came from Kolar pre

some application to the Incometax Office and that promptly was received on that application. Kundanmal who is to look this and search for the papers and he found some papers but he was unable to get at the order passed on the application file by Gemulal. He was unable to find and demand notice on About the end of March 1933, the petitioner was able to find the order of the Incometax Officer ~~xxx~~ dismissing the application dated 2-2-1933. The petitioner on 3-4-1933 applied to Incometax Officer to revise the assessment order and the Officer by his letter dated 19-4-1933 has informed the petitioner that no revision can be made by him and that the petitioner if so advised he may appeal to the Assistant Commissioner of Incometax.

The petitioner submits that notice under section 23(2) dated 26-12-1932 was served upon the cook only and the petitioner never knew anything about it. The cook was not authorised to receive the notice. The cook unauthorisedly made the correspondence with the Incometax Officer and the petitioner ~~xxxx~~ very sorry to find that as a result of the correspondence he was assessed under Section 23(4).

The petitioner most humbly submits that the very order of the Officer will show that there was nobody to look after the interest of the petitioner at the shop in the Bangalore and as such the petitioner was not able to produce the books. ~~xx~~

If the petitioner had not been detained at Warwar, owing to the death of his son and an attack of Paralysis on the mother he would certainly have hurried up to Bangalore and might have produced the books.

Even the cook by his letter dated 11-1-1933 requested the Officer to grant time upto March 1933 and informed the Officer that if that time was granted the petitioner might have produced the books.

Your petitioner was regular in production of books in the past and he would have certainly produced the books if some responsible person would have been present at the shop.

The petitioner's business at Bangalore is so small ~~xxx~~ ~~xxxx

daughter all near relations had to go to Marwar, there was only a cook boy of 14 years ~~was~~ left at the shop.

Your petitioner further submits that no proper application has been made to the Incometax Officer under Sec.27 and no proper representations has been made before him for cancelling the assessment. As under the Act the Officer has got no power to revise his own assessment, the remedy of the petitioner is an appeal to you under Act.

Your petitioner therefore requests you to cancel the assessment made by the Officer and ~~thereby~~ reopen the assessment under Sec.27 directing the Officer to examine the accounts and assess the petitioner accordingly.

The petitioner lastly submits that the assessment is extremely heavy and looking to the pasthistory of the assessee cannot be said to have been based upon the proper facts and the best judgment of the Officer.

D. 136

Dated 8-2-1933

Rao Sahib S. Thippaswamy

Read petition dated 2-2-1933 from
V. Harathekend on behalf of Bhaktavatsalam
Pillay

The petition is a Student Reading at Tyler.
He says he is the grand son of Bhaktavatsalam
This seems to be his only right to Speak on
behalf of the accused. He knows absolutely nothing
of what he is Speaking about and I found
it impossible to take the boy seriously
The petition is dismissed

To Harathekend Sowcar
Dale Lane, Ingeson Road
Bangalore

Memorandum.

No 4460.

FROM

THE INCOME-TAX OFFICER,
C. & M. STATION, BANGALORE.

19th April, 1933.

To

Mr. Bakthavarmull Buchraj,
Tate Lane, Shoolay,
Bangalore.

Income-tax assessment - 1932-33 - Revision.

As I am not empowered to revise the assessment already made, you may appeal to the Assistant Commissioner of Income-tax, in the form enclosed herewith, with the necessary Court-fee stamp, if so advised.

INCOME-TAX OFFICER.

MEMORANDUM.

460

The Assistant Commissioner
of Income-tax,

C. & M. Station, Bangalore,
27th May 1933.

To

Bakthavarmull Buchraj,
Tate Lane,
Shoolay.

His petition dated 23rd April 1933.

The petition to condone the delay of 1½ months in preferring an appeal is summarily rejected.

RSS.

ASST. COMMISSIONER OF INCOME-TAX.

3

No. F.460

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 18th July *1933* .

FROM G. H. COOKE, ESQUIRE, M.C., I.C.S.,
COLLECTOR AND ASST. COMMR. OF INCOME-TAX,
CIVIL AND MILITARY STATION,
Bangalore.

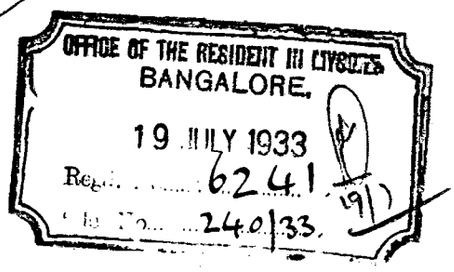
TO

The Secretary to the Resident and
Commissioner of Income-tax,
Civil and Military Station, Bangalore.

Subject.— Bhaktahvarmull Buchraj, Tate Lane, Shoolay,
Your No. 4822 dated the 30th June 1933 calling for
assessment and appeal records.

SIR,

In forwarding herewith the assessment and appeal records in the above case, with a typed copy of the order, I have the honour to submit that in exercise of the discretion allowed to me under Section 30(2) of the Act, I summarily rejected the petition to condone the delay of 1½ months in preferring an appeal, and that therefore no proceedings were taken under Section 30(1) of the Act.



I have the honour to be,
Sir,
Your most obedient servant,

ASST. COMMISSIONER OF INCOME-TAX.

RSS.

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX,

Civil and Military Station, Bangalore.

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No. 1336 Dated the 16th February 1934.

Before:-

Major G. Kirkbride, I.A.,
Secretary to the Hon'ble the Resident in Mysore
and Commissioner of Income-tax.

Income-tax Review Petition No.4 of 1933-34.

Petitioners:-

Messrs. Baktawarmal Bachraj,
Tate Lane, Shoolay, Bangalore.

ORDER.

The assessees in this case are Baktawarmal Bachraj, a firm of Marwari money lenders doing business in the Civil and Military Station, Bangalore, the Kolar Gold Fields and elsewhere in India. The Firm consists of three brothers, Baktawarmal, Bachraj and Kundanmal. It is stated that the first two live permanently in Marwar and the last named runs the business in Bangalore.

In the course of the proceedings a notice was issued under section 23(2) for the production of accounts and as this was not complied with an assessment was made under section 23(4) on the 21st February 1933.

On the 2nd February 1933 an application, presumably under section 27, was made for the case to be reopened. This was dismissed on the 8th February 1933. On the 26th April 1933 the Income-tax Officer's order was appealed against, and an application was simultaneously filed under section 30(2) praying for the delay of 1½ months in filing the appeal to be condoned. This last petition was summarily rejected and it is this with which I am concerned.

In the review petition now before me the whole proceedings are discussed and I therefore propose to examine the case under section 33.

The points before me are two.-

(1) Whether the notice under section 23(2) was properly served and if so whether the assessees were prevented by sufficient cause from complying with it.

(2) Whether the assessment is unduly high.

I will deal with the question of service first. The notice under section 23 (2) issued on the 26th December 1932 was acknowledged on the 3rd January 1933 by Bansilal, Brahmin. This man replied on the 11th January 1933 that he was not authorised to act for his employee who was not in the Station and would not be for 2 months. He said he had written to his employee about the receipt of the notice and asked for a date in March when the accounts would be produced. The Income-tax Officer replied that as a special case he would allow the books to be produced on the 20th January 1933. The notice was issued on January 11th and received at the shop by one Arokioswamy. His connection with the shop is not known. As nothing else happened the assessment was made on the 21st January 1933. The demand notice was served on Bansilal on the 29th January 1933.

Petitioner told the Assistant Commissioner that Bansilal was his cook and was not authorised to act for him, and that he Petitioner knew nothing about it.

On the 2nd February 1933 Harakchand, grandson of Bakhtawarmal filed a petition for the case to be reopened and stated that Bansilal had no authority to act. On the 13th February 1933 a telegram was received from one Sukhraj saying that the assessees had gone on pilgrimage and asking for a "fortnight time". We have Bansilal's statement that his employee was appraised of the notice of the 26th December 1933 and the subsequent application of Harakchand and the telegram satisfy me that the assessee knew all about the notice. Even if this is accepted we have the assessee's contention that Bansilal had no right to receive the notice. I do not agree. So long as the assessee gets intimation that a notice from the Income-tax Officer has been received, the requirements of the law are satisfied. I have also reason to believe that in Marwari cases it is an accepted practice that whoever is actually in the shop is allowed to sign for the

the assessee. I find it moreover difficult to believe that a Marwari money lender would leave his shop for any length of time entirely untended, in this case, according to Kundanmall, one of the partners, for three months. I am therefore satisfied that the notice was properly served.

Out of this decision a subsidiary point arises as to whether the assessees were prevented by sufficient cause from producing the accounts.

If they had not denied receipt of the notice of the 26th December 1933 but had explained in a reasonable manner that they wanted time it would have been very different and the reasons put forward for an extention could have been considered on their merits. When the assessees are entirely inconsistent and inaccurate, to put it mildly, it is quite impossible for the Income-tax Officer to delay proceedings and I am satisfied that no good cause prevented them from producing their accounts. In the above circumstances I am not prepared to consider whether the assessment is excessive.

The petition is dismissed.

Major,
COMMISSIONER OF INCOME TAX.

To

The petitioner.

The Collector and Assistant Commissioner of Income-tax, with the assessment and appeal records.